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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 566th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 10.20 a.m.

ATTENDANCE OF NON-MEMBER STATES

1. The CHAIRMAN, after announcing that Kazakhstan had asked to take part in the Subcommittee's work and recalling that it was for the Committee on the Peaceful Uses of Outer Space to grant observer status, proposed that the Subcommittee should not take a formal decision but that, if there was no objection, the representative of Kazakhstan should attend the Subcommittee's official meetings and submit a request to the Chairman should he desire to make a statement.

It was so decided.

GENERAL EXCHANGE OF VIEWS (continued)

2. Mrs. FLORES (Uruguay) said that although the Committee had established a legal framework within which a broad range of space-related activities had been carried out, there was in fact an increasing tendency for developments in the field to exceed the scope of the existing norms, and the progressive development of international space law was therefore imperative. Her delegation had repeatedly stated that the definition and delimitation of outer space and the character and utilization of the geostationary orbit were questions requiring thorough review so that an agreement might be reached as quickly as possible. The working papers presented were a good starting-point for exchanging of views and thus achieving specific results. That would make it possible to solve long-standing problems and ensure that future activities related to the geostationary orbit would be guided by the principles of equity and rationality. It was essential to establish a specific legal regime governing the use of that natural, limited and heterogeneous resource, which was situated in outer space and formed part of the common heritage of mankind.

3. Her delegation considered, in addition, that it would be necessary to prepare a convention on the question of space debris, a subject which had aroused the interest of various delegations, as indicated in paragraph 19 of the Legal Subcommittee's report on the work of its thirty-first session (A/AC.105/514) and to which the General Assembly had referred in paragraph 23 and the following paragraphs of its resolution 47/67.

4. Referring to the legal aspects of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, she said that the views expressed and the observations made concerning A/AC.105/C.2/L.182, co-sponsored by Uruguay, had been very constructive and the contributions of the various delegations on the subject would allow considerable progress to be made towards the establishment of principles relating to international cooperation in outer space. Cooperation was an international legal obligation and a pre-requisite for the legality of all outer space activity; in addition, it was a cardinal principle embodied in various legal instruments dealing with outer space, such as the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial

(Mrs. Flores, Uruguay)

Bodies and in Article 1, paragraph 3, of the Charter of the United Nations, which established it as a fundamental purpose of the Organization. The establishment of specific cooperation mechanisms which would permit the full implementation of that principle, was, therefore, a task which the Subcommittee should take up, particularly as it related to agenda item 5.

5. Mr. GOROVE (Space Law Committee of the International Law Association (ILA)) said that the founding in 1873 of ILA, whose name dated from 1895, stemmed from the conviction of its founders that a code of international law must precede any resort to international arbitration and that the want of such a code hindered the substitution of arbitration for war as a mode of dispute settlement. As a non-governmental international institution having headquarters in London and some 40 national branches around the world, ILA operated through its specialized committees set up in various areas of public and private international law.

6. One of the ILA committees was the Space Law Committee, which had worked on many important issues. For instance, in 1984, it had completed the preparation of a draft Convention on the Settlement of Space Law Disputes. More recently, the Committee had been considering the elaboration of principles and guidelines on the subject of environmental risks arising from space activities. In addition, the Committee was engaged in drafting the final text of an Instrument to Protect the Environment from Damage Caused by Space Activities, which was to be presented at the sixty-sixth ILA Conference, to be held at Buenos Aires in 1994. Within the context of that task, it had the following substantive matters assigned to it for consideration: definitions of contamination, pollution and debris; the scope of application of the instrument, which should be as wide as possible; a general obligation to cooperate, incumbent on States and international organizations engaged in space activities, in order effectively to implement the instrument; more precise obligations, such as obligations to prevent, to inform, to consult and to negotiate in good faith when there were reasons to believe that a certain space activity was likely to be detrimental to the environment; the questions of responsibility and liability; and methods of dispute settlement, including provision for compulsory third-party settlement of disputes should no agreement be reached within a specified time-limit.

7. ILA shared the opinion expressed in resolutions of the United Nations General Assembly and the statements of many representatives that the environmental aspects of space activities, and, in particular space debris, must be discussed by the Committee on the Peaceful Uses of Outer Space. Should the ILA Space Law Committee be called upon, it would be more than happy to assist in any way it could in that field.

8. The members of the ILA Space Law Committee had also participated in other space law activities, for example, the preparation of a draft Convention on Manned Space Flight, which he himself had brought to the Legal Subcommittee's attention in 1991 on behalf of the International Astronautical Federation. As a follow-up, an international colloquium on the draft Convention, attended by leading experts in the field from around the world, had been held in Cologne in 1992. The ILA Space Law Committee stood ready to offer its assistance in that area and others relating to space law whenever the Committee on the Peaceful Uses of Outer Space considered it appropriate.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (continued)

9. Mr. RAO (India), referring to the question of the definition and delimitation of outer space, said that for more than two decades the Legal Subcommittee had witnessed a bipolar debate along cold war lines on the need for and usefulness of defining and delimiting outer space as distinguished from airspace and ways of establishing criteria for that purpose. Faced with a stalemate in the discussion, the delegation of the former Soviet Union had proposed that the Subcommittee should consider studying the use of aerospace systems as a specific practical element of the general subject. During the thirty-first session of the Subcommittee held in Geneva, several useful ideas on that subject had been put forth.

10. Although his delegation was one of those which supported the idea that for both practical and legal reasons it was necessary and useful to distinguish outer space clearly from airspace, because they had different attributes and were governed by different principles, he considered that for the time being, the Subcommittee should continue studying the question of the use of aerospace systems, with a view to avoiding a further stalemate in the discussion. The debate should focus on the relationship between aerospace objects and outer space and, to the extent necessary, draw a distinction between that relationship and the one existing between those objects and airspace. Once there was a clear understanding of the broad framework of the proposal, specific legal issues might be identified for detailed discussion. The basic underpinning was to determine whether an object was identical with the medium of its transit. That fundamental issue would open up several related issues for consideration.

11. With regard to the legal aspects of the geostationary orbit, the Subcommittee had been considering ways and means of achieving the rational and equitable use of the orbit, as evidenced by the working non-paper submitted and revised on the initiative of Colombia and other countries (A/AC.105/514, annex II, para. 24). There was no doubt that the geostationary orbit was part and parcel of outer space, and accordingly, must be regulated by the same legal principles. Thus, the problem of the definition and delimitation of the geostationary orbit did not arise since it was a zone of outer space and was clearly distinguishable from airspace.

12. The question of the rational and equitable use of the geostationary orbit, together with related issues, was handled by the International Telecommunication Union (ITU). Accordingly, the Subcommittee, all of whose members were also members of ITU, should deal with broader issues of policy and law. There was no contradiction between the roles of ITU and the Committee on the Peaceful Uses of Outer Space. Their roles were, rather, complementary and useful within the overall context of the peaceful uses of outer space and the interests of mankind in general. Account must be taken of the special needs of the developing countries in considering the utilization of outer space in general and of the geostationary orbit in particular. Further, there must be an equitable relationship between the needs of various countries and their ability to use the geostationary orbit, taking due account of their capacities in that regard. The Nairobi framework on the management and use of the geostationary orbit

(Mr. Rao, India)

formulated by the International Telecommunication Union (ITU) must be assessed from all those angles.

13. Mr. ORRICO (Mexico) reiterated the importance of the definition and delimitation of airspace and outer space. The working paper submitted by the Russian Federation was encouraging, since it offered a possible means of broaching and resolving the matter in a way that was satisfactory to all. Mexico supported the paper, which could serve as a basis for dealing with international legal problems relating to space flights, which would inevitably result in the establishment of a boundary between the two zones. As part of such an exercise, the technical opinion of the International Civil Aviation Organization (ICAO) should be sought, so that the Subcommittee and the Working Group would have available exact technical criteria to guide their deliberations. There was also a need to study carefully the effects on space law of certain advances in space technology, such as the existence of reusable spacecraft, which, on completion of a mission, returned to Earth as aircraft, and access by such craft to the airspace of other countries.

14. It was necessary to begin the elaboration of a legal regime to regulate the utilization of the geostationary orbit so as to avoid its saturation with space objects and debris. The orbit was a limited natural resource that must be used equitably and efficiently on behalf of mankind as a whole, free of any questions of sovereignty. Mexico firmly supported the working non-paper submitted by Colombia on the management of the geostationary orbit; it could serve as a significant basis for negotiation.

15. His delegation drew attention once again to the serious threat posed by space debris for current and future activities in space and called for consideration of an international agreement on the matter. In that connection, it would be necessary to resolve a series of outstanding legal issues and, among other things, define and determine who had jurisdiction over space debris and who was responsible for damage caused by it. The Committee and its two Subcommittees should thus begin, as early as possible, to review all the outstanding technical, legal and political issues relating to space debris.

16. Mr. SCHROGL (Germany) expressed his delegation's complete satisfaction with the work of ITU aimed at ensuring equitable access for all States to the geostationary orbit. Germany supported the drawing up of "a priori" plans for certain telecommunications services that would guarantee into the next century equitable access to the geostationary orbit for every country, regardless of its current ability or intention to use the orbit.

17. At the ITU Additional Plenipotentiary Conference in December 1992, the member States of ITU had agreed on a structural reform of the organization to make it work even more efficiently. With the replacement of World Administrative Radio Conferences by Telecommunications Conferences and the creation of a radio communications as well as a development sector, the promotion of the developing countries' interests had been enormously enhanced. The most appropriate course would thus be for ITU to review the question of access to the geostationary orbit.

(Mr. Schrogl, Germany)

18. The question then arose of what kind of complementary work the Legal Subcommittee could engage in without interfering with the accomplishments of ITU. It might be appropriate for the Subcommittee to consider certain aspects which required in-depth review, such as the question of space debris in the geostationary orbit. It was essential to give the item the importance it deserved and for the Subcommittee to concentrate on areas where the role of ITU would not be prejudiced.

19. Efforts to define or delimit outer space at a specific point, whether 100 or 36,000 kilometres, had proved to be neither necessary nor of benefit for the exploration and use of outer space. It was debatable whether such a limitation was really needed, particularly given the progress which had been achieved. A premature delimitation of airspace and outer space which was not based on solid criteria might even impede the further development of space technology and contradict the principle of the rational use not only of the geostationary orbit but of outer space in general.

20. With regard to the right of passage by aerospace objects through the airspace of States, referred to in the working paper by the Russian Federation, his delegation understood that aerospace objects, such as Buran, needed approximately 7,000 kilometres below the altitude of 100 to 110 kilometres for re-entry. He thus wished the Russian Federation to provide the exact descent trajectories of Buran, so that the question of the right of passage could be discussed on the basis of specific scientific data and those States which would be overflown could study the problem from a practical viewpoint.

21. According to the Russian working paper, there was an international practice whereby a space object launched by a State might, when being placed in orbit, pass without hindrance over the territory of other States at virtually any altitude. His delegation acknowledged such a practice for the passage of space objects at altitudes above 100 to 110 kilometres for space flight under normal conditions, but not below 100 to 110 kilometres. As was well established, satellites could not describe a full orbit below that altitude. His delegation would like to hear of any precedents in that regard. One way of clarifying such issues would be for the Subcommittee to agree upon a series of questions, which could then be put to Member States by the Secretary-General.

The meeting rose at 11.10 a.m.